IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 46 OF 1998.

1. State of Goa,
   Through the Dy. Collector & SDO,
   Ponda Sub-Division,
   Ponda, Goa.

2. The Assistant Defence Estate
   Officer, having his office
   at Panaji, Goa. ... Appellants.

VERSUS

1. Smt. Radhabai Voikunth Ghode,
   r/o 65 Abade Faria Road,
   Margao, Goa (dead),
   represented by legal heirs:

   1a) Anil Voikunth Ghode.

   1b) Pramod Voikunth Ghode.

   1c) Dr. Sunil Voikunth Ghode,
   all residing at H.No.65,
   Abade Faria Road, Margao,
   Goa. ... Respondents.

Shri S. Vahidulla, Government Advocate for the Appellants.

Shri V. Menezes, Advocate for the Respondents.

CORAM: N.A. BRITTO, J.

DATE OF RESERVING THE JUDGMENT: 5.04.2004
DATE OF PRONOUNCING THE JUDGMENT: 8.04.2004

J U D G M E N T:

The State of Goa and the Assistant Defence Estate Officer, Panaji has filed the present appeal against the Judgment/Award of the Reference Court

(District Judge, Panaji) dated 27.10.97.

2. Briefly stated, by virtue of the Notification issued under Section 4(1) of the Land Acquisition Act, 1894 published in the Official Gazette dated 13.12.88 the Government acquired 38325 sq.m. of land in village Ponda, Goa for the purpose of 6 TTR (2 STC) at Kurti, Ponda, Goa (additional area) and in that was included a plot of land admeasuring 2872 sq.m. of survey no.65 of Kurti, Ponda belonging to the respondent (since deceased and represented by her heirs) and the LAO by his Award dated 23.11.90 awarded to the respondent compensation at the rate of Rs.40/- per sq.m. The respondent having sought reference under Section 18 of the said Act, the Reference Court was pleased to enhance the compensation at Rs.147/- per sq.m. based on a pre-notification sale deed dated 17.10.88

3. At the time of hearing, learned Government Advocate Shri Vahidulla on behalf of the appellant has submitted that there was no similarity between the acquired land and the land of sale deed dated 13.10.88 and therefore the same could not have been used as a guide to fix the compensation payable to the respondent. Shri Vahidulla has next submitted

that there was no evidence led before the learned Reference Court that the acquired land was located in a residential zone inasmuch as the learned Reference Court also did not consider that the plot of the sale deed was a very small plot while the acquired land was a large property. Learned Advocate Shri Vahidulla next submitted that some of the factors which were required to be considered as per the law laid down by the Hon'ble Supreme Court in the case of **Shaji Kuriakose and another v. Indian Oil Corpn. Ltd. and others** (1001) 7 S.C.C., 650 particularly Factors (4) and (5) were not applicable to the case of the respondent. It is the submission of learned Advocate Shri Vahidulla that in the circumstances, the awarded compensation by the L.A.O. ought to have been maintained.

4. On the other hand, Shri Menezes, learned Advocate for the respondent, has submitted that the respondent had produced one pre-notification sale deed, namely sale deed dated 17.10.88 - AW1/C to show the price prevailing in the locality, but also had produced three other post-notification sale deeds to show that the price in the locality were always on the rise. Learned Advocate Shri Menezes has submitted that the learned Reference Court has

considered all aspects of the case and enhanced the compensation awarded to the respondent at the rate of Rs.140/- per sq.m. which requires to be maintained. Learned Advocate Shri Menezes has placed reliance on the cases of **Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and another** (A.I.R. 1988 S.C., 1652), **Karan Singh and others v. Union of India** (1997) 8 S.C.C., 186 and **Special Deputy Collector and another v. Kurra Sambasiva Rao and others** reported in (1997) 6 S.C.C., 41.

5. In the case of **Shaji Kuriakose v. Indian Oil Corpn. Ltd.** (supra), the Hon'ble S.C. has observed that comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. But comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are:

(1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sale depending upon the disadvantages attached with the acquired land.

6. In the case of **The Collector of Lakhimpur v. Bhuban Chandra Dutta,** reported in A.I.R. 1971 S.C., 2015 it has been stated by the Hon'ble Supreme Court that in determining compensation, the value fetched for small plot of land cannot be applied to lands covering a very large extent. The large area of land

cannot possibly fetch a price at the same rate at which small plots are sold.

7. In the case of **Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and another** (supra) the Hon'ble Supreme Court inter alia stated that a balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do. and the market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

8. In the case of **Special Deputy Collector v. Kurra Sambasiva Rao and others** (1997) 6 S.C.C., **41** the Hon'ble Supreme Court has observed that where fair and reasonable and adequate market value is always a question of fact depends on the evidence adduced, circumstantial evidence, and probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in

the open market in the locality in which the acquired lands are situated as on the date of the notification under Section 4(1); but not an anxious buyer dealing at arm's length with throw-away price, nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value.

9. In the case of **Karan Singh and others v. Union of India** (1997) 8 S.C.C., 186 it has been observed that in the absence of any evidence of sale of land on the date of issue of notification under Section 4 of the Act, under certain conditions the post-notification transactions of sales of land can be relied upon in determining the market value of the acquired land. One of the conditions being that it must be shown before the Court by reliable evidence that there was no appreciation of the value of land during the period of issue of notification under Section 4 of the Act and the date of transaction of sale which is sought to be relied upon for the purposes of fixing the market value of the acquired land. It has also to be borne in mind that if the claimant relies on any post-notification transaction, the burden is upon him to show that the price of the land remained static and there was no upward rise in the price of the land during the period of issue of

notification under Section 4 of the Act and the date of transaction of sale.

10. Admittedly in the case at hand, the learned Reference Court has preferred to place reliance on a pre-notification sale deed dated 17.10.88 -Exh.AW1/C to assess the market value of the acquired land. Admittedly the acquired land pertained to survey No.65, while the land of the plot of Deed of Sale pertained to survey No.70 and the lands of both survey numbers at one time belonged to M/s. Matches Goa Pvt. Ltd. The land of the respondent was given to her earlier as her share in the assets of the said M/s. Matches Goa Pvt. Ltd. while the plot of the Sale Deed was one of the plots developed by the said M/s. Matches Goa Pvt. Ltd. The evidence on record showed that the plot of the Sale Deed was at a distance of about 100 metres or so on the eastern side of Ponda/Savoi-Verem road while the acquired land was situated on the western side of the said road at a distance of about 400 to 500 metres away from the said Savoi-Verem road, but at the same time was abutting a kacha road going from Chirpatem from the said Ponda/Savoi-Verem road.

11. The first submission made by Shri Vahidulla,

learned Govt. Advocate is that the acquired property was not falling in a residential zone. There has been no reply from learned Advocate Shri Menezes in respect of the said submission of learned Govt. Advocate Shri Vahidulla, but I am not inclined to entertain this submission for it is made for the first time at the hearing of the appeal without there having been any foundation as regards the same in the cross-examination of the witnesses examined on behalf of the respondent and without the same having also been made a ground of appeal.

12. The next submission of learned Govt. Advocate Shri Vahidulla is that there was no similarity between the acquired land and the plot of sale deed dated 17.10.80. In my opinion, this submission also cannot be accepted. The learned Reference Court as regards this aspect has observed that the acquired plot was forming part of the same property earlier and it was said by both AW.1 Pramod V. Ghode and AW.3 Suryakant Parmekar to be of a similar nature as that of the plot sold and therefore it followed that the plot of Sale Deed was comparable except that the plot sold was a developed plot but the acquired plot was not. In my opinion considering the evidence on record the said observations of the Reference Court

cannot be faulted.

13. Shri Vahidulla has next submitted that the acquired plot was comparatively large and the plot of the sale deed was a very small plot and therefore a further deduction ought to have been made by the learned Reference court. Here I am in agreement with the submission made by learned Govt. Advocate Shri Vahidulla. The acquired property was more than nine times larger than the plot of the sale deed dated 17.10.88 and it is well settled position that willing buyers do not offer for a large land the same price which is offered to a small plot and in case of larger areas there is also some waiting period in case plots are made and are required to be sold. A deduction in this regard ought to have been taken by the learned Reference Court. In my opinion, a further deduction was also required to be made because the plot of sale deed dated 17.10.88 was at a distance of about 100 metres from the said main road proceeding from Ponda-Savoi-Verem while the acquired property was much in the interior towards the western side of the road at a distance of about 400 to 500 metres and the same was abutting a kacha road. Considering that the acquired property was not developed while the plot of the sale deed dated

17.10.88 was a developed plot and further considering the other two disadvantages, I have referred to, a total deduction of at least 40% ought to have been made by the learned Reference Court. By making the said deduction of 40% the price of the acquired land based on the plot of Sale Deed dated 17.10.88 works out to Rs.132/- per sq.m.

14. Consequently I partly allow the appeal and fix the market value of the acquired land of Survey No.65 at Rs.132/- per sq.m. Needless to observe, the respondents would be entitled to receive in addition to the said market value, other statutory benefits as provided under the Act. No order as to costs.

N.A. BRITTO, J.

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